

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAKEITH L. MCCOY,

Plaintiff,

v.

LISA GREEN, *et al.*,

Defendants.

Case No.: 1:25-cv-00238-KES-CDB

ORDER VACATING JUNE 23, 2025,
FINDINGS AND RECOMMENDATIONS

(Docs. 8, 9, 10)

FINDINGS AND RECOMMENDATIONS TO
(1) DISMISS PLAINTIFF'S *MONELL* CLAIM,
(2) DISMISS CDCR FROM THIS ACTION,
AND (3) PROCEED ON MALICIOUS
PROSECUTION CLAIM AGAINST CERTAIN
DEFENDANTS

(Doc. 7)

14-DAY OBJECTION PERIOD

I. Relevant Background

Plaintiff Lakeith L. McCoy ("Plaintiff"), proceeding pro se, initiated this action with the filing of a complaint on February 24, 2025, in which he alleges civil rights violations pursuant to 42 U.S.C. section 1983 against numerous Defendants. (Doc. 1).

Following its issuance of an order to show cause and receipt of Plaintiff's response (Docs. 4, 6), on May 22, 2025, the Court entered a screening order noting certain deficiencies in Plaintiff's complaint and granting Plaintiff leave to amend his complaint to the extent of clarifying the allegations of his deficiently pled claim under *Monell v. Dep't of Social Servs. Of City of New York*, 436 U.S. 658 (1978). (Doc. 7). When Plaintiff failed to timely file an amended complaint, on June

23, 2025, the undersigned issued findings and recommendations to dismiss this action without prejudice. (Doc. 8). Plaintiff was ordered to file any objections within 14 days from the date of service of the findings and recommendations. *Id.* at 7.

II. Order Vacating June 23, 2025, Findings and Recommendations

On July 11, 2025, the Clerk of the Court docketed Plaintiff's filings (dated July 8, 2025) of a notice of willingness to proceed only on the remaining malicious prosecution claim (Doc. 9) and objections to the findings and recommendations (Doc. 10). In his objections, Plaintiff asserts he never received the Court's orders granting him leave to amend and only became aware of the order requiring him to respond following his receipt of the pending findings and recommendations. (Doc. 10 at 1). He asserts that his neighborhood "has been hit multiple times in the past with mail theft." *Id.* Plaintiff requests that the Court excuse this oversight and allow the complaint to proceed on his remaining malicious prosecution claim. *Id.*

Based on Plaintiff's representations that he was unaware of the Court's order requiring a response due to mail issues, the undersigned finds good cause to vacate the June 23, 2025, findings and recommendations to dismiss the action for Plaintiff's failure to prosecute this action and to comply with the Court's orders and Local Rules. Further, in light of Plaintiff's notice expressing his desire to proceed on his complaint only as to his malicious prosecution claim, the undersigned issues these updated findings and recommendations as set forth below.

III. Updated Findings and Recommendations

A. Recommendation to Dismiss *Monell* Claim

1. Monell Claim – Governing Authority

To cognizably allege a claim under *Monell*, Plaintiff must show: (1) he was deprived of a constitutional right; (2) defendant had a policy or custom; (3) the policy or custom amounted to a deliberate indifference to his constitutional right; and (4) the policy was the moving force behind the constitutional violation. *Burke v. Cnty. of Alameda*, 586 F.3d 725, 734 (9th Cir. 2009) (quoting *Monell v. Dep't of Social Servs. Of City of New York*, 436 U.S. 658, 694 (1978)) (emphasis added). A custom is "a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well-settled as to constitute a custom or usage with the force

1 of law.” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) (internal quotations omitted).
2 The custom must be so “persistent and widespread” that it constitutes a “permanent and well
3 settled” practice. *Monell*, 436 U.S. at 691 (internal quotation omitted). “Liability for improper
4 custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices
5 of sufficient duration, frequency and consistency that the conduct has become a traditional method
6 of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). However,
7 “contemporaneous or subsequent conduct cannot establish a pattern of violations that would
8 provide ‘notice to the [local government entity] and the opportunity to conform to constitutional
9 dictates.’” *Connick v. Thompson*, 563 U.S. 51, 63 n.7 (2011).

10 2. Analysis

11 Consistent with the above-cited authority, the Court admonished Plaintiff that he may not
12 maintain a *Monell* claim based on allegations that he faced malicious prosecution on an isolated
13 basis. (Doc. 7 at 4). Plaintiff was advised that any amended complaint must challenge a law or
14 regulation, or a policy or procedure or custom of County of Kern that would give rise to municipal
15 liability. *Id.*

16 Plaintiff’s allegations regarding Defendants’ maintenance of unconstitutional customs,
17 policies, and practices are inadequate. Thus, Plaintiff vaguely alleges in paragraphs 72 and 73 of
18 the complaint that Defendants “have been bringing false criminal charges against the citizens of
19 Kern County” based on false allegations and that, “in many instances,” charges were brought
20 against prisoners that were handcuff and could not have committed the crime charged. Separately,
21 in paragraphs 91 and 93, Plaintiff alleges in conclusory fashion that Defendants maintained
22 unidentified customs, policies, and practices relating to employing, retaining, supervising, and
23 training, that resulted in the violation of Plaintiff’s constitutional rights. However, only two sub-
24 allegations of these paragraphs arguably apply to Plaintiff’s claim of municipal liability for
25 malicious prosecution. Specifically, paragraph 93(f) alleges Defendants maintained an
26 unconstitutional policy, custom, and practice of “prosecuting individuals without probable cause
27 or reasonable suspicion,” and paragraph 93(g) similarly alleges Defendants maintained a policy,
28 custom, and practice of failing to investigate claims of malicious prosecution.

Plaintiff's assertions provide no facts to show a pattern of similar events or violations. *See Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 936 (S.D. Cal. 2022) ("Put more simply, Plaintiff must do more than allege in a conclusory fashion that the County maintains an unwritten policy or custom of permitting the types of wrongs Plaintiff experienced."). Additionally, Plaintiff does not assert facts establishing that the relevant policymakers, or prison or prosecutorial officials, were made aware of any violations or otherwise had actual or constructive notice of them, nor that any individuals with final policymaking authority caused any violations or ratified them. *See Davis v. City of Ellensburg*, 869 F.2d 1230, 1233 (9th Cir. 1989) ("Davis has failed to establish that there is a genuine issue of material fact regarding the existence of a policy of inadequate training, inadequate medical treatment of prisoners, or deliberate indifference to the use of excessive force. A plaintiff cannot prove the existence of a municipal policy or custom based solely on the occurrence of a single incident of unconstitutional action by a non-policymaking employee.").

Because the complaint fails to allege facts sufficient to state a claim under *Monell* and given Plaintiff's election to proceed on the complaint only as to his malicious prosecution claim, the undersigned recommends that the first cause of action (*Monell* claim) be dismissed.

B. Recommendation to Dismiss California Department of Corrections and Rehabilitation ("CDCR") from this Action

Separately, the Court admonished Plaintiff that the naming of CDCR as a defendant in the operative complaint was improper given that suits against CDCR and its facilities are barred by the Eleventh Amendment. Specifically, the Eleventh Amendment prohibits federal courts from hearing suits brought against a state by its own citizens, as well as by citizens of other states. *See Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition extends to suits against states and state agencies. *See Lucas v. Dep't of Corrs.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); *Taylor*, 880 F.2d at 1045. A state's agency responsible for incarceration and correction of prisoners is a state agency for purposes of the Eleventh Amendment. *See Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (per curiam). The State of California has not waived its Eleventh Amendment immunity for federal claims under section 1983. *Dittman v. California*, 191 F.3d 1020, 1025–26 (9th Cir. 1999) (citing *Atascadero State*

Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)); *see Brown v. Cal. Dep't. of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (finding California Department of Corrections and California Board of Prison Terms entitled to Eleventh Amendment immunity).

Based on Plaintiff's desire to proceed on his complaint as filed only on his malicious prosecution claim, and because Plaintiff does not object, the undersigned recommends that CDCR be dismissed from this action as an improper defendant.

C. Recommendation that Malicious Prosecution Claim Proceed Against Correctional Officer Defendants and Be Dismissed Against Remaining Defendants

1. Malicious Prosecution – Governing Authority

“In order to prevail on a § 1983 claim of malicious prosecution, a plaintiff ‘must show that the defendants prosecuted [him] with malice and without probable cause, and that they did so for the purpose of denying [him] equal protection or another specific constitutional right.’” *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004) (citing *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995)); *Usher v. City of Los Angeles*, 828 F.2d 556, 561-62 (9th Cir. 1987) (“In California, the elements of malicious prosecution are (1) the initiation of criminal prosecution, (2) malicious motivation, and (3) lack of probable cause.”) (citing *Singleton v. Perry*, 45 Cal.2d 489, 494 (1955)); *see Harris v. Restivo*, No. 1:20-cv-00797-JLT-EPG (PC), 2022 WL 17812736, at *8 (E.D. Cal. Oct. 17, 2022) (“The Ninth Circuit has ‘incorporated the relevant elements of the common law tort of malicious prosecution into [the] analysis under § 1983.’”).

“Malicious prosecution actions are not limited to suits against prosecutors but may be brought ... against other persons who have wrongfully caused the charges to be filed.” *Awabdy*, 368 F.3d at 1066 (citing *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1126–27 (9th Cir. 2002)).

2. Analysis – KCDA Defendants Entitled to Prosecutorial Immunity

In Plaintiff's second cause of action for malicious prosecution under 42 U.S.C. § 1983, he alleges that Defendants violated his due process rights under the Fourteenth Amendment based on Defendants' malicious criminal prosecution of Plaintiff without probable cause that was ultimately

1 terminated in Plaintiff's favor. (Doc. 1 ¶¶ 101, 102). He alleges on March 14, 2016, Kern County
2 District Attorney Defendants Lisa Green, Brandon Neill Stallings, and Cynthia Zimmer ("KCDA
3 Defendants") filed four criminal charges against him that were based on Defendants' "deliberate
4 fabrication and falsification of evidence" after Plaintiff sought civil remedies. *Id.* ¶¶ 66, 69. He
5 asserts that Defendants King, Holguin, Casillas, A. Martinez, C. Martinez, Gonzales, and Garcia
6 ("correctional officer Defendants")—all of whom are correctional officers at California
7 Correctional Institution in Tehachapi, California ("CCI")—intentionally falsified "their reports to
8 initiate baseless charges against [Plaintiff] and cover up their misconduct." *Id.* ¶ 62. He alleges
9 Holguin, A. Martinez, King, and Gonzales continued to deliberately fabricate evidence regarding
10 Plaintiff's conduct while falsely testifying at the preliminary hearing in the criminal case against
11 Plaintiff. *Id.* ¶ 68. He alleges that KCDA Defendants "deliberately withheld exculpatory reports
12 from the defense" throughout the criminal proceedings and KCDA Defendants "ignored the
13 inconsistencies in the Defendants' reports ... as well as clear evidence of falsification[] and
14 manufacturing of the reports [in order to] secure a conviction against Plaintiff[.]" *Id.* ¶¶ 70, 71.
15 Plaintiff further alleges that "[a]fter five years of litigation, and absolutely no probable cause to
16 initiate proceedings against [him] to begin with, on March 22, 2021[,], all four criminal charges ...
17 were dismissed." *Id.* ¶ 83.

18 The undersigned finds these allegations may be sufficient to state a malicious prosecution
19 claim under § 1983 as Plaintiff has alleged that all four criminal charges of Defendants' criminal
20 prosecution against him lacked any probable cause and were dismissed. *See Awabdy*, 368 F.3d at
21 1068 ("An individual seeking to bring a malicious prosecution claim must generally establish that
22 the prior proceedings terminated in such a manner as to indicate his innocence. ... [A] dismissal in
23 the interests of justice satisfies this requirement if it reflects the opinion of the prosecuting party or
24 the court that the action lacked merit or would result in a decision in favor of the defendant.")
25 (citations omitted); *Usher*, 828 F.2d at 562 ("The criminal proceeding against Usher was terminated
26 in his favor, by a dismissal for lack of evidence. Read liberally as they must be, Usher's pleadings
27 fairly bring his common law tort claim of malicious prosecution within the scope of section
28 1983[.]"). However, the undersigned finds this claim barred against certain defendants based on

1 the principle of prosecutorial immunity.

2 “The immunity of a prosecutor is based upon the same purpose that underlies the immunity
3 of judges and grand jurors acting within the scope of their duties: to protect the judicial process.”
4 *Milstein v. Cooley*, 257 F.3d 1004, 1007 (9th Cir. 2001) (citing *Burns v. Reed*, 500 U.S. 478, 484
5 (1991); *Imbler v. Pachtman*, 424 U.S. 409, 418 (1976)). “Specifically, absolute immunity for
6 prosecutors is warranted (1) to allow prosecutors to focus their energies on prosecuting, rather than
7 defending lawsuits[;] (2) to enable prosecutors to exercise independent judgment in deciding which
8 suits to bring and conducting them in court[;] (3) to preserve the criminal justice system's function
9 of determining guilt or innocence by ensuring that triers of fact are not denied relevant (although
10 sometimes conflicting) evidence because of prosecutors' fear of suit[;] and (4) to ensure fairness to
11 defendants by enabling judges to make rulings in their favor without the subconscious knowledge
12 that such rulings could subject the prosecutor to liability[.]” *Id.* (citations and quotations omitted).
13 “[T]his immunity does leave the genuinely wronged defendant without civil redress against a
14 prosecutor whose malicious or dishonest action deprives him of liberty. But the alternative of
15 qualifying a prosecutor's immunity would disserve the broader public interest.” *Imbler*, 424 U.S.
16 at 427.

17 Thus, the Ninth Circuit has recognized that “[p]rosecutors performing their official
18 prosecutorial functions are entitled to absolute immunity against constitutional torts.” *Lacey v.*
19 *Maricopa Cnty.*, 693 F.3d 896, 912 (9th Cir. 2012). “A state prosecutor is entitled to absolute
20 immunity from liability under § 1983 for violating a person’s federal constitutional rights when he
21 or she engages in activities intimately associated with the judicial phase of the criminal process.”
22 *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003).

23 Here, Plaintiff alleges that KCDA Defendants—all of whom are alleged to be or were
24 prosecutors at the Kern County District Attorney’s Office who “acted under color of state law and
25 within the course and scope of their duties at all relevant times” (*see* Doc. 1 ¶¶ 5-9)—maliciously
26 prosecuted him in violation of his constitutional rights. However, “based on the legal standards
27 above, [prosecutorial KCDA Defendants] are entitled to prosecutorial immunity.” *Valencia v.*
28 *Balakian*, No. 1:24-cv-01477-EPG (PC), 2025 WL 886984, at *7 (E.D. Cal. Mar. 21, 2025), *report*

1 *and recommendation adopted*, 20225 WL 1400281 (E.D. Cal. May 14, 2025). “Even charges of
 2 malicious prosecution, falsification of evidence, coercion of perjured testimony and concealment
 3 of exculpatory evidence will be dismissed on grounds of prosecutorial immunity.” *Rhodes v. Cnty.*
 4 *of Madera*, No. 1:16-cv-01631-DAD-SKO, 2017 WL 4151274, at *7 (E.D. Cal. Sept. 19, 2017)
 5 (citing *Stevens v. Rifkin*, 608 F. Supp. 710, 728 (N.D. Cal. 1984)); *see Milstein*, 257 F.3d at 1008
 6 (“in initiating a prosecution and in presenting the State’s case, the prosecutor is immune from a
 7 civil suit for damages under § 1983 ... This immunity covers the knowing use of false testimony at
 8 trial, the suppression of exculpatory evidence, and malicious prosecution[.]”). Given the “scope of
 9 prosecutorial immunity is broad enough to encompass even the wide-ranging ... allegations of the
 10 [c]omplaint[, a]dding specific or additional details [in an amended complaint] will not change the
 11 fact that [KCDA Defendants were] acting within [their] official prosecutorial duties when pursuing
 12 the criminal case against Plaintiff.” *Pleasant v. Turner*, No. 1:13-cv-00329 LJO-GSA, 2015 WL
 13 641729, at *8 (E.D. Cal. Feb. 13, 2015) (citing *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir.
 14 1986)). Thus, the undersigned finds the malicious prosecution claim is barred insofar as it is
 15 asserted against KDCA Defendants.

16 3. Analysis – Malicious Prosecution Claim as to Other Defendants

17 Setting aside the KDCA Defendants, the undersigned finds the complaint cognizably
 18 alleges a malicious prosecution claim against certain correctional officer Defendants, all of whom
 19 are alleged to have intentionally falsified “their reports to initiate baseless charges against [Plaintiff]
 20 and cover up their misconduct.” *See* (Doc. 1 ¶ 62).¹ “The Ninth Circuit has long recognized that
 21 ‘[f]iling a criminal complaint immunizes investigating officers...from damages suffered thereafter
 22 because it is presumed that the prosecutor filing the complaint exercised independent judgment in
 23 determining that probable cause for an accused’s arrest exists at that time.’” *Rhodes*, 2017 WL
 24 4151274 at *7 (citing *Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981), *overruled on other*
 25 *grounds by Beck v. City of Upland*, 527 F.3d 853, 865 (9th Cir. 2008)). “However, ‘[t]he
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27 ¹ For the same reasons the undersigned recommends dismissal of Plaintiff’s *Monell* cause of action against
 28 Defendant County of Kern, the undersigned recommends dismissal of Plaintiff’s malicious prosecution claim against
 Defendant County of Kern.

presumption can be overcome, for example, by evidence that the officers knowingly submitted false information or pressured the prosecutor to act contrary to her independent judgment.” *Id.* (citing *Smiddy v. Varney*, 803 F.2d 1469, 1471 (9th Cir. 1986), *opinion modified on denial of reh'g*, 811 F.2d 504 (9th Cir. 1987)).

Plaintiff’s allegations—that the correctional officer Defendants intentionally falsified their “reports to initiate baseless charges against [Plaintiff] and cover up their misconduct[,]” deliberately fabricated evidence regarding Plaintiff’s conduct “while testifying falsely” in the criminal proceedings against him, and that KCDA Defendants ignored the inconsistencies in these reports “as well as clear evidence of falsification” to secure a conviction against Plaintiff (*see id.* ¶¶ 62, 68, 88, 70)—appear sufficient to show that the “unsuccessful prosecution [against him]” lacked probable cause such that “any reasonably attorney would regard [the action] as totally and completely without merit.” *Pleasant*, 2015 WL 641729 at *9 (citing *Downey Venture v. LMI Ins. Co.*, 66 Cal. App. 4th 478, 494 (1998)). Thus, the undersigned finds a malicious prosecution claim sufficiently stated against County of Kern and the correctional officer Defendants and recommends this action proceed on this claim.

Because the malicious prosecution claim sets forth no allegations against remaining Defendants Hollis Bennett, K. Westegren, David Calvillo, Eric Barajas, Trevor Stanley, Genaro Arrellano, Kim Holland, T. Ritchie, and Herbert “Bert” Thomas, Plaintiff has failed to state a malicious prosecution claim against them. Thus, the undersigned recommends these remaining Defendants be dismissed. *See Rhodes*, 2017 WL 4151274 at *7 (“When a plaintiff pleads no facts to rebut the presumption of prosecutorial independent, dismissal is appropriate.”) (citing *Smiddy*, 803 F.2d at 1471).

* * * * *

In sum, the undersigned recommends: (1) Plaintiff’s *Monell* claim be dismissed, (2) CDCR be dismissed as an improper Defendant, (3) KCDA Defendants be dismissed based on prosecutorial immunity, (4) Defendants County of Kern and Bennett, Westegren, Calvillo, Barajas, Stanley, Arrellano, Holland, Ritchie, and Thomas be dismissed for failure to state a claim against them, and (5) this action proceeds on Plaintiff’s remaining malicious prosecution claim against Defendant

1 correctional officers King, Holguin, Casillas, A. Martinez, C. Martinez, Gonzales, and Garcia.

2 **Conclusion, Order, and Recommendations**

3 For the reasons given above, **IT IS HEREBY ORDERED** that:

4 1. The findings and recommendations issued on June 23, 2025 (Doc. 8) are VACATED.

5 And **IT IS RECOMMENDED** as follows:

6 1. The Court DISMISS Plaintiff's first cause of action (*Monell* claim) for failure to state a
7 claim.

8 2. The Court DISMISS CDCR from this action as an improper defendant.

9 3. The Court DISMISS KCDA Defendants Green, Stallings, and Zimmer based on
10 prosecutorial immunity.

11 4. The Court DISMISS Defendants County of Kern and Bennett, Westegren, Calvillo,
12 Barajas, Stanley, Arrellano, Holland, Ritchie, and Thomas for failure to state a claim
13 against them.

14 5. This action proceeds on Plaintiff's remaining cause of action (malicious prosecution
15 under § 1983) against correctional officer Defendants King, Holguin, Casillas, A.
16 Martinez, C. Martinez, Gonzales, and Garcia.

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1 These Findings and Recommendations will be submitted to the United States District Judge
2 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days** after
3 being served with a copy of these Findings and Recommendations, a party may file written
4 objections with the Court. Local Rule 304(b). The document should be captioned, "Objections to
5 Magistrate Judge's Findings and Recommendations" and **shall not exceed 15 pages** without leave
6 of Court and good cause shown. The Court will not consider exhibits attached to the Objections,
7 but a party may refer to exhibits in the record by CM/ECF document and page number. Any pages
8 filed in excess of the 15-page limitation may be disregarded by the District Judge when reviewing
9 these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party's failure to file any
10 objections within the specified time may result in the waiver of certain rights on appeal. *Wilkerson*
11 *v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

12 IT IS SO ORDERED.

13 Dated: **July 18, 2025**

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UNITED STATES MAGISTRATE JUDGE